

Appl. No. 08/904,121
Amndt. Date March 16, 2004
Response to Office Action dated October 20, 2003

REMARKS

The undersigned thanks the Examiner for the courtesy facsimile, transmitted March 12, 2004, of his Office Action dated October 20, 2003. In that Office Action, the Examiner finally rejected claims 1-13, 15-18, and 21-22 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,409,695, to Johnston in view of U.S. Patent No. 5,317,769 to Weismiller et al. The Examiner also rejected claim 14 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,409,695, to Johnston in view of U.S. Patent No. 5,317,769 to Weismiller et al., and further in view of U.S. Patent No. 5,393,938 to Bumbalough. The Examiner also rejected claims 19-20 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 4,409,695, to Johnston in view of U.S. Patent No. 5,317,769 to Weismiller et al., and further in view of U.S. Patent No. 5,295,276 to Richards.

In conjunction with this Response, Applicant has amended claims 5, 11-13, 19, and 22 and added claims 23-30 without adding new matter. Support for the amendments to claim 5 can be found on page 8. Support for the amendments to claims 11-13 can be found on pages 10-11 of the application. Support for the amendment of claim 19 can be found on page 12 of the application. Support for the amendment of claim 22 (an "image rendering" display) can be found on page 15 of the application, specifically, where it describes the liquid crystal display 160 as providing visual feedback through a system of menus. Support for newly added claims 23-30 can be found in the preexisting claims and pages 13-14 and 16 of the application.

As noted before, Applicant reserves the right to present evidence establishing prior invention to the references of Weismiller et al., Bumbalough, and Richards. Applicant respectfully traverses the rejections. In hopes of finding some common ground, the undersigned will start first with some of the dependent claims, and then work backwards to claim 1.

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Claim 13

With respect to claim 13, the Examiner stated that Johnston discloses "a mechanism adapted for positioning of an X-ray film within said X-ray cassette (the mechanism can be any number of surfaces defined by 63/64/65)." Applicant respectfully traverses this rejection because the surfaces defined by 63/64/65 cannot be described as a "mechanism" for positioning an X-ray film within an X-ray cassette. A "mechanism" is "[t]he arrangement or relation of the parts of a machine; the parts of a machine, taken collectively; the arrangement or relation of the parts of anything as adapted to produce an effect; as, the mechanism of a watch; the mechanism of a sewing machine...." WEBSTER'S REVISED UNABRIDGED DICTIONARY (1996). A "machine" is "a construction, more or less complex, consisting of a combination of moving parts, or simple mechanical elements, as wheels, levers, cams, etc., with their supports and connecting framework, calculated to constitute a prime mover, or to receive force and motion from a prime mover or from another machine, and transmit, modify, and apply them to the production of some desired mechanical effect or work." *Id.* None of the cited references, together or in combination, disclose, teach, or suggest a "mechanism" for positioning an X-ray film within said X-ray cassette. Accordingly, Applicant respectfully requests reconsideration of the rejection of claim 13.

Claim 22

With respect to claim 22, the Examiner stated that "Johnston discloses a bariatric bed wherein; at least one side rail 9 comprises an interiorly positioned, integral bed control 57/58; said bed control comprising a display and being adapted to effect articulation of said mattress support 3." Applicant respectfully was unable to find any side-rail-integral-bed-control "display" described or illustrated in Johnston. Perhaps the Examiner assumes that Johnston's

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push button switches are labeled, as they probably are, and equates this presumed labeling with a "display." But by using the word "display," Applicant had something more dynamic in mind. Accordingly, Applicant has amended claim 22 to recite an "image rendering" display, and Applicant respectfully requests reconsideration of the rejection in light of that amendment.

Claim 21

With respect to claim 21, the Examiner stated that "Johnston discloses a bariatric bed further comprising a plurality of laterally adjustable side rails 9" But Johnston's side rails are not "laterally adjustable." They are only pivotally adjustable. The claimed "laterally adjustable" feature finds support on page 16 and Fig. 2 of the specification, which recites that "[s]hafts 147 and 148 freely rotate and slide laterally within bushings 149 and 150." None of the cited references, together or in combination, disclose, teach, or suggest a "laterally adjustable" side rail. Accordingly, Applicant respectfully requests reconsideration of the rejection of claim 21.

Claims 19-20

With respect to claims 19-20, the Examiner stated that "Richards teaches a foot board assembly 20 adapted to articulate relative to a leg section, from a resting position, when a force is applied thereto, but to increasingly resist said force with increasing degree of articulation." Richards' foot board assembly 20, however, is clearly not suitable for use as a step to support a patient entering or exiting the bed. Rather, Richards' foot board assembly 20 merely acts as a barrier against which a patient can maintain him or herself positioned properly on a bed. Applicant has amended claim 19 to recite that the claimed foot board assembly is "adapted to be used as a step to support a patient entering or exiting the bed." Applicant respectfully requests reconsideration of the rejection in light of that amendment.

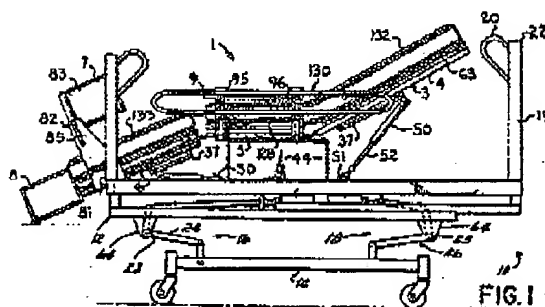
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Claims 5-6

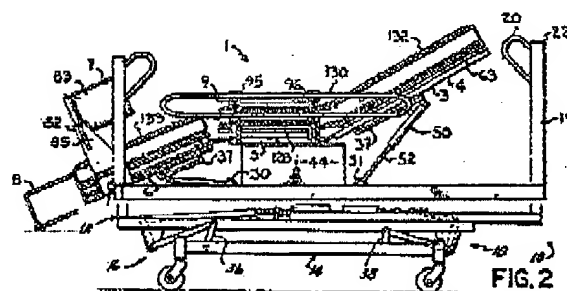
Applicant has amended claim 5 to recite that the head end jack motor and the leg end jack motor are mounted to a frame, with respect to which the "second support section" is being articulated. The Examiner's proposed combination of Johnston and Weismiller, by contrast, would have Weismiller's motors mounted on the member 12 that is being articulated with respect to frame 10. Because the cited combination does not cover claims 5 and 6, as amended, Applicant respectfully requests reconsideration of this rejection.

Claims 1-4, 7-12, 14-18

The Applicant appreciates the Examiner's detailed explanation of how he would combine Johnston with Weismiller.¹ The drawings below, a combination of truncated portions of Figs. 1 and 2 of Weismiller with a truncated portion of Fig. 3 of Johnston, reflects Applicant's understanding of the Examiner's proposed combination:



Combination in Uppermost Position



Combination in Lowered Position

Applicant agrees that Weismiller teaches the desirability of having a bed capable of Trendelenburg and reverse Trendelenburg positions. Indeed, Applicant believes that there had

¹ The argument could be made that the particular form of the proposed combination is inspired by Applicant's specification.

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been (prior to Applicant's invention) a long felt but unsolved need for an articulating, Trendelenburg-capable bariatric bed. The strength and stress limitations of pre-existing designs, as well as other hurdles, constituted obstacles to meeting this need. Finding a solution that overcame these obstacles was nonobvious. Applicant respectfully maintains that a person of ordinary skill in the art would not consider the proposed combination of Weismiller with Johnston as providing the needed solutions. Likewise, it was obvious in 1900 that one needed thrust and wings to make an airplane. Making an airplane that would actually fly, however, proved to be a difficult and nonobvious task.

The Examiner maintains that the "combination taught by Johnston and Weismiller could be structurally rigid and have strength," and that the burden is upon the Applicant to produce evidence that the combination would lack the necessary strength. But there is no reasonable expectation that the two references teach a combination having the necessary structural rigidity and strength. Without a reasonable expectation of success, no prima facie case has been made. In any event, Johnston's teaching of "great structural rigidity and strength" in column 1, lines 32-33, and its characterization of "frame 2" as "a stationary, ground engaging structure adapted to support the patient 10 and the mattress support 3 above the ground or floor surface" on column 3, lines 2-5, both serve to teach away from the proposed combination with Weismiller, because Weismiller neither describes nor illustrates a bed frame having "great structural rigidity," and because such a combination would render "frame 2" no longer "a stationary, ground engaging structure."

The drawing above illustrates other problems that motivate one of ordinary skill in the art away from the proposed combination. First, the foot-end lift mechanism of the Weismiller frame obstructs articulation of the foot section of the Johnston portion of the bed. For this reason

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alone, a person of ordinary skill would not likely utilize the teachings of Weismiller at all. Second, the seat position of the combination is too high, even when the Weismiller frame is lowered to its lowermost position. This would render Johnston unsuitable for one of its purposes, namely, "to facilitate movement onto and off the bed by a patient" over the foot end of the bed. Johnston, col. 1, lines 50-52.

Applicant reserves the right to produce rebuttal evidence of the inoperability or non-obviousness of the proposed combination. But such evidence should not be necessary. The Examiner's detailed explanation of how he would combine Johnston with Weismiller illuminates another line of argument that may more efficiently bring this case to resolution.

Specifically, claim 1 recites an articulated mattress support comprising three *articulatable* sections. In other words, each of the three sections of the mattress support can be articulated. The Examiner's proposed combination would *articulate* the first and third sections 4 and 6 of the mattress support 3 of Johnston, and enable longitudinal *tilting* of the bed support frame 12 of Weismiller, which extends along the entire length of the bed. But the combination would not *articulate* the second (seat region) section 5 of the mattress support 3 with respect to the full-length bed support frame 12. Because the combination would keep Johnston's seat section 5 fixed with respect to the full-length bed support frame 12 of Weismiller, the combination cannot be said to "articulate" the seat section 5. Accordingly, the combination does not cover claims 1-4, 7-12, and 14-18. Applicant respectfully requests reconsideration of the rejection of claims 1-4, 7-12, and 14-18.

Claims 23-30

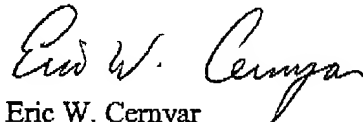
Applicant has added new claims 23-30 to emphasize certain innovative aspects of the claimed invention that had been buried in the dependent claims. It will be evident that claim 23

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is patentable over the recited combination for many of the reasons noted with respect to claim 1.
It will also be evident that claim 24 is patentable over the recited combination for many of the reasons noted with respect to claim 19.

In view of the foregoing arguments, Applicant respectfully asks that the Examiner withdraw the § 103 rejections. Believing that all matters raised in the Examiner's October 20, 2003, Office Action, have been addressed, Applicant respectfully asks that the claims be allowed and passed to issue.

Respectfully submitted,



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Applicant - Venzell, John H.
Title - Bariatric Bed Apparatus and Methods
TCA.U. 3677
Examiner: HO, Thomas Y.
Docket No.: Bar.255.U9

Examiner HO:

Attached are the following:

Transmittal Form
Fee Transmittal for FY 2004 (via additional copy for accounting purposes)
Request for Continued Examination (RCE) Transmittal
Reply to April 29, 2003 Office Action

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